IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.893 OF 2000
(THROUGH JAIL)

Jotiram Indrajeet Gore
Yerwada Central Prison
Pune - 411 006 ... Appellant

V/s.

The State of Maharashtra ... Respondent

a/w
CRIMINAL APPEAL NO.894 OF 2000
(THROUGH JAIL)

Smt. Aasha Jotiram Gore
Yerwada Central Prison
Pune - 411 006 ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.V.N. Kamble, Advocate appointed for Appellant
Mrs.U.V. Kejriwal, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **MARCH 16, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. These Appeals impugn the judgment of the Additional Sessions Judge, Satara in Sessions Case No.205 of 1999, convicting the appellants in both the appeals under sections 302 r/w 34, 394 r/w 34 of the Indian Penal Code. They were arraigned as accused Nos.1 and 2 respectively before the Sessions Court alongwith accused No.3 who has been acquitted of these charges.

Since both these appeals arise from the same judgment which deals with the same incident, they are being heard and disposed of together.

2. The case of the prosecution is that on the night of 2.6.1997, the appellants Jotiram and Aasha in Criminal Appeal Nos.893 of 2000 and 894 of 2000 respectively who are a married couple went to the field of Raghunath Kuchekar to seek employment on his field. They were accompanied by Jotiram's mother, Padmini, who was Accused No.3 before the Sessions Court and one Akka Namdeo Khomne, PW7. According to the prosecution, Jotiram and his wife Aasha killed Raghunath Kuchekar and his wife on the field in the night, in the presence of Padmini and PW7, Akka. Jotiram and Aasha then stole gold ornaments from the dead bodies and some other articles including an electric iron and a wrist watch from the house of the Kuchekars and left the village. On the morning of 3.6.1997 when PW8, Suhas, the son of the Kuchekar couple reached the field, he found his parents dead. A complaint was lodged by him with the police who arrived on the spot at about 8 O'clock in the morning. The Panchnama of the scene of offence was drawn up. Articles which were found lying around were seized. Inquest Panchnamas of Raghunath and his wife Shantabai were drawn and the postmortem was conducted on the dead bodies. The postmortem report disclosed that

the death of both the victims was due to head injuries. Jotiram and Aasha as well as Padmini were apprehended in a different village about 2 years later. Gold ornaments were recovered from Jotiram and Aasha. Some gold ornaments belonging to the Kuchekar couple were recovered from PW11, the goldsmith. The electric iron and the wrist watch which according to the prosecution the appellants had decamped with, were also recovered from some shops. Jotiram and Aasha and Padmini were charged under sections 302 r/w 34 and 394 r/w 34 of the Indian Penal Code.

3. The prosecution examined 11 witnesses including the eye witness Akka, PW7 and complainant Suhas, son of the deceased couple, PW8. On a consideration of the evidence before it, the Sessions Court has convicted Jotiram and Aasha while acquitting Padmini of the same charges. Each of the appellants has been sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/- or in default to suffer rigorous imprisonment of six months. The conviction under section 394 r/w 34 of the Indian Penal Code has resulted a sentence of rigorous imprisonment of 10 years and a fine of Rs.1000/- each and in default rigorous imprisonment of six months. The benefit of set-off under section 428 of Criminal Procedure Code was given to the appellants since they were in jail from

21.2.1999.

4. Mr.Kamble, appearing for both the appellants, submitted that the Sessions Court has erred in convicting the couple since there was no evidence to establish beyond reasonable doubt that the appellants had committed an offence. He submits that the entire case of the prosecution is based on the evidence of the eye witness, Akka, whose testimony seems highly improbable and therefore, should not have been believed. He further submits that the recovery of the gold ornaments and other articles having not been made under section 27 of the Evidence Act should not be accepted. He submits that the ornaments recovered from the appellants and from the goldsmith, PW11, have not been identified as the same as those which belonged to the victims. According to the learned Advocate, the entire evidence led by the prosecution does not prove that the appellants had committed any offence, much less the offence of murder or the offence punishable under section 394 of Indian Penal Code. The learned advocate submits that PW8 has in his complaint described the ornaments which were found missing from the dead bodies of his parents. They were: (1) two gold rings about 5 gms each - one with a red stone and the other with the letter "S" engraved on it; (2) a gold chain weighing

approximately 80 gms.; (3) Mangalsutra and (f) anklets worn by his mother. This description does not match the items recovered from the appellants or the items recovered from the goldsmith, which allegedly had been pledged by the appellants. He, therefore, submits that there is no evidence at all to link the appellants to the death of the Kuchekar couple or to the gold ornaments which were found missing from the couple or to the missing articles belonging to them.

5. The learned APP submitted that PW7 had vividly described the incident which occurred in her presence and therefore, her testimony has been rightly believed by the learned Sessions Judge. She further submits that the evidence on record establishes that the gold ornaments recovered belonged to the deceased couple and they had been identified by PW8. In these circumstances, according to the learned APP, there was no need to set aside the findings of the learned Sessions Judge by allowing the appeals.

6. We have scrutinised the records and proceedings which are before us. In the F.I.R. lodged by PW8, the son of the victims, he has stated that he found the dead bodies of his parents in the field when he visited them on the morning of 3.6.1997. He has also described the missing ornaments from the victims. PW7, who is

supposed to be an eye witness was a girl of 14 years when the incident occurred. She has deposed that she became acquainted with Jotiram and his wife when they were residing at her uncle's place and working as agricultural labourers. She has further stated that when Jotiram and Aasha left the house of her uncle alongwith their two daughters, she accompanied them without the knowledge of her parents. According to her, in February 1997, she stayed with Jotiram and his family at Jotiram's maternal uncle's place at Pali. They decided to work for the Kuchekar couple from 1.3.1997. She has then stated that the incident occurred in summer. They were all taken to the field according to her, the Kuchekar couple slept in the open place in front of the house at about 10 pm while she and the appellants and the members of their family slept inside the house. This witness has further stated that Jotiram then stated that the Kuchekars had too much money and therefore, they should be killed. She has further deposed that Aasha woke her up at 2 am and then she alongwith Aasha, Jotiram and Padmini went out of the house. She then states that she saw Jotiram hit Raghunath Kuchekar on the head while Aasha struck his wife. This witness has then sought to explain away the reason for not disclosing the incident to anybody till she returned to her own village with her father. She has deposed that the appellants stole the ornaments from

the dead bodies and also an electric iron, a wrist watch and clothes from the house. They then left the place immediately and she was dropped off at her relative's place at Khatgaon from where her father escorted her back to their house.

7. The entire evidence of PW7 seems to be highly improbable. There is no explanation as to how a 14 year old girl could leave her house alongwith Jotiram and Aasha without her parents' knowledge. Nor is there any evidence on record to suggest that her parents made efforts to search for her after she left home. Her evidence does not inspire any confidence. She has stated that Aasha had woken her up at 2 am after which she (Aasha) and Jotiram killed the Kuchekar couple. If indeed the appellants had committed the crime or had the intention of committing the crime, they would certainly not have awoken PW8 till after they had completed the offence. The appellants would not clearly have wanted a witness to their crime. It strains our credulity to accept the version of PW7. After the incident, she was with the appellants for 15 days till she was dropped off at her cousin's place. Her father came to her cousin's place at Khatgaon in order escort her back to their house in Shelgaon. There is no explanation as to why this witness has not disclosed the incident to anyone even during her stay with her cousin. She has stated

she was in the custody of police for about 2 to 3 days. All these factors lead us to the conclusion that the evidence of PW7 cannot be believed.

8. PW8, the son of the victims has described the missing ornaments in his complaint. The recovery panchnama shows that the description of the ornaments recovered both from the appellants as well as from the goldsmith, PW11, does not tally with that of PW8. Furthermore, the ornaments were recovered after almost two years of the incident. These ornaments are not the same as those which PW7 has stated were stolen by the appellants in her presence. PW8 in his complaint has stated that his father wore a gold chain weighing about 80 gms. The recovery panchnama shows that the gold chain which was found with Jotiram when he was apprehended weighed about 5 to 6 gms. The recovery panchnama drawn by PW10 does not support the case of the prosecution that the same ornaments which were stolen from the victims were found with the appellants. Therefore, this evidence also will have to be discarded.

9. There are too many contradictions and discrepancies in the evidence led by the prosecution and, therefore, it is not possible to accept the submission of the learned APP or the view taken by the trial Court. In these circumstances, the judgment and

order of Sessions Court must be set aside. The appeal is, therefore, allowed. The conviction and sentence is set aside. The appellants are ordered to be released forthwith, if not otherwise required in law.